

Title 16. Respiratory Care Board
Department of Consumer Affairs
[Disciplinary Revisions]

INITIAL STATEMENT OF REASONS

HEARING DATE: June 14, 2002

SUBJECT MATTER OF PROPOSED REGULATIONS:

Issuance of citations and fines for violations of the Business and Professions Code (BP&C), amendments to the Disciplinary Guidelines, and amendments to substantial relationship criteria.

SECTIONS AFFECTED:

Sections 1399.302, 1399.370, 1399.374, 1399.375, 1399.376, 1399.378, 1399.380, 1399.381, 1399.382, 1399.383, 1399.384, 1399.385, 1399.387, 1399.388, 1399.389, and 1399.390 of the California Code of Regulations, Title 16, Division 13.6, Article 7 and 8.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT, OR REPEAL:

Amend Section 1399.302 of Division 13.6 Article 7 of Title 16 of the California Code of Regulations to provide additional definitions enhancing reader clarity.

Amend Section 1399.370 of Division 13.6 Article 7 of Title 16 of the California Code of Regulations to enhance reader clarity.

Amend Section 1399.374 of Division 13.6 Article 7 of Title 16 of the California Code of Regulations to revise disciplinary guidelines used by Administrative Law Judges to determine penalties and/or conditions of probation.

Repeal Section 1399.375 of Division 13.6 Article 7 of Title 16 of the California Code of Regulations which provides the Respiratory Care Board to issue citations for unlicensed practice. The Respiratory Care Board is proposing to repeal this section and include the issuance of citations for unlicensed practice under Sections 1399.378, 1399.380, 1399.381, 1399.382, and 1399.383 of Division 13.6 Article 7 of Title 16 of the California Code of Regulations.

Amend Section 1399.376 of Division 13.6 Article 7 of Title 16 of the California Code of Regulations to provide consistency with other sections in Article 7.

Adopt Sections 1399.378, 1399.380, 1399.381, 1399.382, 1399.383 and 1399.384 of Division 13.6 Article 7 of Title 16 of the California Code of Regulations to expand the Respiratory Care Board's existing citation and fine program. Adopting these sections will allow the Respiratory Care Board to impose a lessor means of discipline for various violations of the Respiratory Care Practice Act, while at the same time, reduce expenditures ensuring monies are available to prosecute high priority complaints.

Adopt Sections 1399.385, 1399.387, 1399.388, 1399.389, and 1399.390 of Division 13.6 Article 7 of Title 16 of the California Code of Regulations to allow the Respiratory Care Board to cite and fine respiratory care practitioner employers who fail to comply with BP&C sections 3717, 3758, and 3758.6.

Amend Section 1399.380 of Division 13.6 Article 8 of Title 16 of the California Code of Regulations to Section 1399.395 to allow for the expansion of Article 7.

FACTUAL BASIS:

In an effort to reduce expenditures and ensure monies are available for high priority complaints, the Respiratory Care Board is revising its enforcement priorities and expanding its cite and fine program.

Currently, in order for the Respiratory Care Board to take action against a person who violates the Respiratory Care Practice Act, it is necessary to pursue formal administrative disciplinary action which is time consuming and costly. The Respiratory Care Board would like the option to issue citations and fines for those violations that are not serious in nature.

The proposed citation and fine regulation is, in some cases, a more effective cost efficient enforcement tool to assist in carrying out its legislative mandate to protect the public health, safety and welfare from incompetent practitioners and employers. The proposed regulations will continue to create a deterrent for violations of the BP&C, will enforce and implement existing statutes, will reduce expenditures by eliminating the need to prosecute minor violations of the Act, and will maintain public protection by making this information available to the public.

The current Disciplinary Guidelines were adopted in 1997 and are outdated. The proposed Disciplinary Guidelines is an updated tool for Administrative Law Judges to refer to when providing for discipline in their proposed decisions. The new version provides 1) aggravating and mitigating circumstances; 2) guideline summarization for easy reference; 3) guideline by code sections; and 4) standard and specialty conditions of probation.

UNDERLYING DATA:

None

BUSINESS IMPACT:

Insignificant

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

None necessary

CONSIDERATION OF ALTERNATIVES:

No alternative which was considered would be either more effective than or equally as effective as and less burdensome to affected private persons than the proposed regulation.